

What effect does engaging in political campaign activities have on an organization that is exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code?

FACTS

The organization is primarily engaged in activities designed to promote social welfare and is exempt from federal income tax under section 501(c)(4) of the Code. In addition, it carries on certain activities involving participation and intervention in political campaigns on behalf of or in opposition to candidates for nomination or election to public office. These political activities take the form of both financial assistance and in-kind services.

LAW

Section 501(c)(4) of the Code provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Section 1.501(c)(4)-1(a)(2)(ii) of the regulation provides that the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.

Section 527(b) of the Code imposes a tax on the taxable income of certain political organizations.

Section 527(f)(1) of the Code provides, in part, that if an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount during the taxable year directly or indirectly for political activities described in section 527(e)(2), then such amount shall be subject to tax under subsection (b) as if the amount constituted political organization taxable income.

Section 527(e)(2) of the Code describes the type of political activities the expenditures for which will subject an exempt organization to tax. These activities are influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, state, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individuals or electors are selected, nominated, elected, or appointed.

ANALYSIS

In order to qualify for exemption under section 501(c)(4) of the Code, an organization must be primarily engaged in activities that promote social welfare. Although the promotion of social welfare within the meaning of section 1.501(c)(4)-1 of the regulations does not include political campaign activities, the regulations do not impose a complete ban on such activities for section 501(c)(4) organizations. Thus, an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare.

For an example of an organization whose participation and intervention in political campaigns bars its exemption under section 501(c)(4), see Rev. Rul. 67-368, C.B. 194. That revenue ruling holds that an organization whose primary activity is rating candidates for public office does not qualify for exemption under section 501(c)(4) because such activity does not constitute the promotion of social welfare.

See also Rev. Rul. 67-71, 1967-1 C.B. 125, Rev. Rul. 74-574, 1974-2 C.B. 160, Rev. Rul. 76-456, 1976-2 C.B. 151, Rev. Rul. 78-248, 1978-1 C.B. 154, and Rev. Rul. 80-282, 1980-41 I.R.B. 7, for other examples of what constitutes participation or intervention in political campaigns.

Section 527 of the Code, which was added by Pub.L. 93-625, January 3, 1975, 1975-1 C.B. 510, 515, and amended by Pub.L. 95-502, October 21, 1978, 1978-2 C.B. 393-395, affect the treatment of political activities of exempt organizations. The report of the Senate Finance Committee on Pub.L. 93-625 specifically indicates that the provisions of section 527(f) apply to organizations that are exempt under section 501(c)(4). It states:

"Exempt organizations which are not political organizations.--Under present law, certain tax-exempt organizations (such as sec. 501(c)(4) organizations) may engage in political campaign activities. The bill generally treats these organizations on an equal basis for tax purposes with political organizations. Under the bill organizations which are exempt under section 501(a) and are described in section 501(c), that engage in political activity, are to be taxed on their net investment income in part as if they were political organizations...."
S.Rep.No.93-1358, 93d Cong., 2d Sess., 29 (1974), 1975-1 C.B. 517, 533.

HOLDING

Since the organization's primary activities promote social welfare, its lawful participation or intervention in political

campaigns on behalf of or in opposition to candidates for public office will not adversely affect its exempt status under section 501(c)(4) of the Code. Further, this organization will be subject to the tax imposed by section 527 on any of its expenditures for political activities that come within the meaning of section 527(e)(2).

FILING INSTRUCTIONS FOR POLITICAL EXPENDITURES

Under section 527(f) of the Code, organizations exempt from federal income tax under section 501(c) that expend over \$100 for political activities must file Form 1120-POL in accordance with the instructions to that form.